

**COMMENTS OF THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS
CONSUMERS TO THE ILLINOIS POWER AGENCY’S DRAFT
2013 POWER PROCUREMENT PLAN**

The Illinois Industrial Energy Consumers (“IIEC”) is an informal association of large industrial electric and gas consumers. It includes manufacturing and industrial companies that purchase their electric supply from third party suppliers certified as alternative retail electric suppliers (“ARES”) under Section 16-115 of the Illinois Public Utilities Act (the “PUA”). (220 ILCS 5/16-115). IIEC also includes companies who have been certified as ARES for the purpose of serving their own electrical loads, or the electrical loads of their affiliates. IIEC companies consume approximately 13 billion kWh of electrical energy in Illinois and have employed as many as 90,000 people in the State.

IIEC welcomes the opportunity to offer comments on the Illinois Power Agency’s (“IPA”) draft 2013 Power Procurement Plan (“Draft Plan”). As end-use customers of ARES, and as ARES, IIEC companies have a direct interest in that portion of the Plan which proposes a sourcing agreement between ARES and the FutureGen generating station. (Draft Plan at 4). IIEC Companies are concerned about the impact of such a proposal on the competitive market in which they purchase electric power and energy. IIEC Companies are also concerned about the proposal, in the plan, to use alternative compliance payment (“ACP”) funds to pay for existing utility renewable contracts. (Draft Plan at 3).

Draft Plan - FUTUREGEN SOURCING AGREEMENT

The Draft Plan implies that ARES can be, or should be, compelled to enter into a sourcing agreement with FutureGen. (See, Draft Plan at 73, stating that “. . . inclusion of the FutureGen sourcing agreement in this year’s Procurement Plan is appropriate so that financing for the unfunded

portion of the project can be secured. . .”) The IPA was created under the Illinois Power Agency Act (the “IPA Act”) (20 ILCS 3855/1-20 et seq.). The IPA has no authority under the IPA Act to compel ARES to enter into a sourcing agreement with FutureGen. (*See, generally*, 20 ILCS 3855/1-20 et seq.). The IPA’s powers extend to the development of a Procurement Plan for electric service to “eligible retail customers” of “electric utilities.” (20 ILCS 3855/1-20(a)). Electric utilities, for the purpose of the IPA Act, have the same definition as electric utilities under Section 16-102 of the PUA. (220 ILCS 5/16-102). There, electric utility is defined to mean: “a public utility, as defined in Section 3-105 of this Act”. Section 3-105 of the PUA excludes ARES from the definition of public utility. (220 ILCS 5/3-105(b)(9)). Eligible retail customers are generally understood to be residential and small commercial fixed price customers who have not chosen service from ARES. (*See*, Draft Plan at 3).

In summary, the IPA is specifically authorized to create a Procurement Plan for electric service to residential and small commercial customers, who are served by electric utilities, not ARES. The IPA Act does not grant the IPA the authority to compel ARES to enter into a sourcing agreement with the owner of a specific generating facility.

The PUA does require that ARES enter into a sourcing agreement with the “initial clean coal facility,” but such a facility does not yet exist. (220 ILCS 5/16-115(d)(5)(iv); Draft Plan at 73). The PUA does not grant the Commission the authority to compel ARES to enter into a sourcing agreement with FutureGen or any other specific clean coal facility. (*See*, 220 ILCS 16-115 generally). The PUA gives the Commission jurisdiction over public utilities as defined in Section 3-103 of the PUA. ((220 ILCS 5/3-103). However, as previously stated, ARES are specifically excluded from the definition

of public utility. (*Id.*). The Commission's authority over ARES is limited to certification of ARES under Section 16-115 of the PUA and the application of renewable portfolio standards for ARES under Section 16-115D of the PUA (220 ILCS 5/16-115 and 16-115D). Neither of these sections grants the Commission the authority to compel ARES to enter into a sourcing agreement with the owner of a specific generating facility, other than the requirement that as the ARES demonstrate that they have entered into a sourcing agreement with the initial clean coal facility which does not exist.

Furthermore, the power Procurement Plan is to be approved by the Commission only if the Commission determines the plan “. . . will ensure adequate, reliable, affordable, efficient and environmentally sustainable electric service at the lowest actual cost over time, taking into account any benefits of price stability.” (220 ILCS 5/16-111.5(j)(ii) and (d)(4)). However, the Draft Plan contains no cost or pricing information that will allow the Commission to make such a determination.

Indeed, the Draft Plan suggests that the IPA “must assess” whether it is in the interest of Illinois electricity consumers “to include additional long-term contracts designed to compensate new generator development in its Procurement Plan.” (Draft Plan at 49). The Draft Plan correctly concludes that the addition of new long-term supply contracts (whether for standard products or output tied to specific generators) should “. . . be deferred until at least the 2014 Procurement Plan.” (*Id.*). The Draft Plan makes an exception to this general recommendation for the FutureGen sourcing agreement. (Draft Plan at 50). Presumably, the Procurement Plan is designed to “. . . ensure adequate, reliable, affordable, efficient and environmentally sustainable electric service at the lowest total cost over time,” taking into account any benefits of price stability,” without the addition of any long-term supply contracts. However, the Draft Plan lacks the cost and pricing data from FutureGen that would allow

the Commission to make the determination that the plan will ensure “electric service at the lowest total cost over time.” IIEC also notes that the Draft Plan does not recommend additional procurements for energy or renewable energy credits, due to the fact there is an over-supply of both energy and renewable energy. (Draft Plan at 3). Therefore, the FutureGen sourcing agreement should be removed from the Draft Plan for this planning year.

The Act makes the IPA responsible for the development of the Procurement Plan in the first instance. (220 ILCS 3855/1-75(a)). The IPA is also charged with the responsibility to prepare a Procurement Plan to “ensure . . . electric service at the lowest total cost over time. . . .” (220 ILCS 3855/1-75(b)). Failure to provide the necessary information to demonstrate that the plan will ensure the lowest total cost over time, with the inclusion of FutureGen, places Illinois electric consumers, at a disadvantage. The statutory process for the development and approval of the Procurement Plan is time constrained. Once the plan is filed with the Commission, parties have only five days to file formal objections in the hopes of persuading the Commission to conduct a hearing and, if a hearing is held, the Commission has only 90 days to consider the entire plan. (220 ILCS 5/16-111/5(d)(3)). Failure to include the necessary supporting financial cost and pricing data in the plan in the first instance, places electric consumers at a disadvantage. They have a limited time period to test the accuracy, reliability and relevance of such data because the data will not be provided until and unless the Commission decides to hold a hearing. Furthermore, there is no clear indication that such information will be provided until well into the 90-day period established by statute for the Commission’s consideration of same.

In sum, the IPA and the Commission have no direct authority to compel ARES to enter into sourcing agreements with any specific generating facility, other than the initial clean coal facility, which does not exist. The pricing, cost, and financial data associated with FutureGen has not been provided in the context of the plan. The Draft Plan concludes that it is in the interest of Illinois electric consumers that additional long-term supply contracts not be added to the Procurement Plan at this time. Under the circumstances, the portion of the plan dealing with the FutureGen sourcing agreement should be deleted from the plan.

USE OF ACP FUNDS FOR UTILITY CONTRACTS

IIEC understands that the IPA is exploring the use of ACP funds collected by ARES and deposited into the Renewable Energy Resources Fund to help pay for utilities' renewable contracts. (Draft Plan at 81). Apparently, in a prior procurement cycle, electric utilities entered into long term contracts for renewable energy resources. Since that time, there has been a significant migration of electrical load from electric utilities to competitive suppliers. (Draft Plan at 16-17). According to the Draft Plan, the long term renewable contracts that electric utilities entered into to serve the load of eligible retail customers, cannot be met within the statutory price caps for renewable resources. (Draft Plan at 3). The combination of significant migration of electric utility load to third party suppliers and long term renewable contracts has created stranded costs.

The IPA is called upon to deal with this situation and proposes to do so by using ACP funds to pay down these contracts. (Draft Plan at 81-82). These funds were collected from ARES customers and paid into the Renewable Portfolio Trust Fund by ARES. (*See*, Draft Plan at 3). Such funds are actually to be used to purchase renewable energy credits on behalf of ARES according to the Draft

Plan. (Draft Plan at 82; 220 ILCS 5/16-115D(4)). IIEC understands the difficult situation that the IPA is in. However, it does note that the creation of long term supply contracts for renewable resources of any kind has turned out to be a poor public policy choice and likely to lead to additional stranded costs in the long term. IIEC is concerned the use of ACP funds, which have been paid by all ARES customers, to pay stranded costs associated with electric service provided to eligible retail customers by electric utilities on a long term basis. ACP funds collected from ARES customers and intended to be used to purchase renewable energy credits for ARES and those customers, should not be used, in the long term, to pay utility contracts for renewable resources.

Respectfully submitted,

ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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